

House Bill 711

By: Representatives Lindsey of the 54th, Atwood of the 179th, Houston of the 170th, Benfield of the 85th, and Jacobs of the 80th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of the Title 24 of the Official Code of Georgia Annotated, relating to
2 privileges, so as to change provisions relating to spousal privilege in criminal proceedings;
3 to provide certain exceptions to the general rule of privilege; to provide for confidentiality
4 of communications between a family violence or sexual assault victim and agents providing
5 services to such victims at family violence shelters and rape crisis centers; to provide for
6 definitions; to provide for a waiver of confidentiality; to provide for admissibility of certain
7 information; to provide for exceptions; to provide for procedure; to provide for related
8 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to privileges, is
12 amended by revising Code Section 24-5-503, relating to husband and wife as witnesses for
13 and against each other in criminal proceedings, as follows:

14 "24-5-503.

15 (a) A husband and wife shall be competent but shall not be compellable to give evidence
16 in any criminal proceeding for or against each other.

17 (b) The privilege created by subsection (a) of this Code section or by corresponding
18 privileges in paragraph (1) of subsection (a) of Code Section 24-5-501 or subsection (a) of
19 Code Section 24-5-505 shall not apply in proceedings in which:

20 (1) The husband or wife is charged with a crime against the person of a child under
21 the age of 18; but such husband or wife shall be compellable to give evidence only on the
22 specific act for which the accused is charged;

23 (2) The husband or wife is charged with a crime against his or her spouse or their marital
24 or separate property;

25 (3) The husband and wife are alleged to have acted jointly in the commission of the
26 crime charged; or

27 (4) The alleged crime occurred prior to the lawful marriage of the husband and wife."

28 **SECTION 2.**

29 Said chapter is further amended by adding a new Code section to read as follows:

30 "24-5-509.

31 (a) As used in this Code section, the term:

32 (1) 'Agent' means a current or former employee or volunteer of a program who has
 33 successfully completed a minimum of 20 hours of training approved by the Criminal
 34 Justice Coordinating Council for victim assistance programs.

35 (2) 'Family violence' shall have the same meaning as provided in Code Section 19-13-1.

36 (3) 'Family violence shelter' means a program whose primary purpose is to provide
 37 services to family violence victims and their families that is not under the direct
 38 supervision of a law enforcement agency, prosecuting attorney's office, or a government
 39 agency.

40 (4) 'Family violence victim' means a person who consults a family violence shelter for
 41 the purpose of securing advice or other services concerning an act of family violence, an
 42 alleged act of family violence, or an attempted act of family violence.

43 (5) 'Government agency' means any agency of the executive, legislative, or judicial
 44 branch of government or political subdivision or authority thereof of this state, any other
 45 state, the District of Columbia, the United States and its territories and possessions, or
 46 any foreign government or international governmental or quasi-governmental agency
 47 recognized by the United States or by any of the several states.

48 (6) 'Program' means a family violence shelter or rape crisis center.

49 (7) 'Rape crisis center' means a program whose primary purpose is to provide services
 50 to sexual assault victims and their families that is not under the direct supervision of a law
 51 enforcement agency, prosecuting attorney's office, or a government agency.

52 (8) 'Services' means any services provided to a victim by a program including but not
 53 limited to crisis hot lines, safe homes and shelters, assessment and intake, counseling,
 54 services for children who are victims of family violence or sexual assault, support in
 55 medical, administrative, and judicial systems, transportation, relocation, and crisis
 56 intervention. Such term shall not include mandatory reporting as required by Code
 57 Section 19-7-5 or 30-5-4.

58 (9) 'Sexual assault' shall have the same meaning as provided in Code Section 17-5-70.

59 (10) 'Sexual assault victim' means a person who consults a rape crisis center for the
 60 purpose of securing advice or other services concerning a sexual assault, an alleged
 61 sexual assault, or an attempted sexual assault.

62 (11) 'Victim' means a family violence victim or sexual assault victim.

63 (b) No agent of a program shall be compelled to disclose any information in any judicial
64 proceeding that the agent acquired while providing services to a victim, provided that such
65 information was necessary to enable the agent to render services, unless the privilege has
66 been waived by the victim or the court finds at a pretrial hearing or hearing outside the
67 presence of the jury by a preponderance of the evidence that:

68 (1) In a civil proceeding:

69 (A) The information or testimony sought is material and relevant to factual issues to
70 be determined;

71 (B) The evidence is not sought solely for the purpose of impeachment of character;

72 (C) The evidence sought is not cumulative of other evidence or information available
73 or already obtained by the party seeking disclosure; and

74 (D) The effect of the disclosure on the victim, including the impact of the disclosure
75 on the relationship between the victim and the agent and the delivery and accessibility
76 of services, is outweighed by the public interest and need for disclosure; or

77 (2) In a criminal proceeding:

78 (A) The information or testimony sought is material and relevant to factual issues and
79 the victim is deceased or is exculpatory on the issue of guilt, degree of guilt, or
80 sentencing for the offense charged or a lesser included offense;

81 (B) The evidence is not sought solely for the purpose of impeachment of character;

82 (C) The evidence sought is not cumulative of other evidence or information available
83 or already obtained by the party seeking disclosure; and

84 (D) The effect of the disclosure on the victim, including the impact of the disclosure
85 on the relationship between the victim and the agent and the delivery and accessibility
86 of services, is outweighed by the public interest and need for disclosure.

87 (c) The privilege granted by this Code section shall not apply if the agent was a witness
88 or party to the family violence or sexual assault or other crime that occurred in the agent's
89 presence.

90 (d) The mere presence of a third person during communications between an agent and
91 victim shall not void the privilege granted by this Code section.

92 (e) If the victim is or has been judicially determined to be incompetent, the victim's
93 guardian may waive the victim's privilege.

94 (f) In criminal proceedings, if either party intends to compel evidence based on this Code
95 section, the party shall file and serve notice of his or her intention on the opposing party
96 at least ten days prior to trial, or as otherwise directed by the court. The court shall hold
97 a pretrial hearing in accordance with subsection (b) of this Code section and determine the
98 issue prior to trial."

99

SECTION 3.

100 This Act shall become effective on January 1, 2013.

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SECTION 4.

102 All laws and parts of laws in conflict with this Act are repealed.